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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,475	06/20/2001	Jeffrey A. Bedell	53470.003013	9579
21967	7590	12/01/2005	EXAMINER	
HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, N.W. SUITE 1200 WASHINGTON, DC 20006-1109			WRIGHT, NORMAN M	
			ART UNIT	PAPER NUMBER
			2134	
DATE MAILED: 12/01/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/884,475

Applicant(s)

BEDELL ET AL.

Examiner

Norman M. Wright

Art Unit

2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 9/15/05
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

  
NORMAN M. WRIGHT  
PRIMARY EXAMINER

## **DETAILED ACTION**

### ***Response to Amendment***

1. The declaration filed on 9/15/05 under 37 CFR 1.131 has been considered but is ineffective to overcome the Wagner '792 reference.
2. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the '792 reference to either a constructive reduction to practice or an actual reduction to practice. Diligence has not been shown from said prior date to said subsequent date, no evidence has been presented. Applicant is reminded that due diligence must be shown through the period to the filing of the application. Moreover, it appears that this is an internal document, which was never been publicly published, and there does not appear to be a date (month/year) on it.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

1. Claims 1-6, 8-24, are rejected under 35 U.S.C. 102(b) as being clearly by anticipated Wagner, U.S. Pat. No. 6,728,792, hereinafter '792.
2. As per claims 1-6, 8-18, Wagner '792 teaches the claimed invention comprising: a method of processing incoming jobs, assigning a job priority, servicing jobs based upon a priority and a servicing scheme, at least one job attribute, job request or report, servicing scheme is priority, servicing formula, first-in first-out,

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formula/servicing overridden by administrator/user, servicing at a late time or cost assigned value or time value or altered schedule/release time or date, a plurality of queues/QICs, selecting and assigning queues based upon priorities, assigning threads to queues. See abstract, figs. 1-4, 9-15, 20-21, col. 1, lines 18-33 et seq. col. 2, lines 5-14, and lines 29-65 et seq., col. 3, lines 19 et seq., col. 4, lines 36-44 et seq., col. 5, lines 15-39 et seq., col. 6, lines 37 et seq., col. 7 and 8, col. 9, lines 25 et seq., claims 1-2, 6-9, and 17. As to the use of sub-queues their priorities, and moving threads, as understood in the claim these features places jobs within sub-queues that are also based upon priority values and moving jobs to another queue. It is believed that '792 accomplished these features by providing sub-queues with their own arbitrary priority variables, which are sub elements and distinct of queues that have arbitrary priority values (col. 2, lines 35-45). The moving of the threads to another queue are believe to have been taught in that the arbitrary placement in queues may be made at runtime based upon changed priorities set at that time (see col. 2, lines 60 et seq., col. 5, lines 10 et seq.).

3. As to claims 19-24, they recite the system and a processor readable medium for performing the process of method claims 1-18. Accordingly, see above for the specifics of the functions and abs. figures 1-2, col. 5, lines 57 et seq., and col. 6. And claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner '792 as applied to claims 1-6 and 8-24 above.

As to claim 7, '792 do not explicitly teach performing a formula of fair share that is based upon the number of jobs submitted. The examiner takes official notice of both the modification and motivation necessary to implement the servicing of a job based upon fair share criteria. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify, the sort criteria of '792 to sort and prioritize tasks based upon a fair share criteria, as recited above. One of ordinary skill in the art would have been motivated to have a fair share criteria, because, he would have realized that the issue of have a great number of jobs/task submitted would necessarily dictate that if the priority is always given to the highest job that some jobs processing would be adversely delayed or not processed in a timely manner for lower priority jobs/task. One of ordinary skill in the art would have been able to modify the invention of '792 by simply augmenting the sort criteria, via hardware, software or firmware, to have queues or sub-queues for tracking the number of jobs/task submitted by a requestor and having a priority adjusted based upon the submitted number of jobs for a particular requestor.

### ***Response to Arguments***

3. Applicant's arguments filed 9/15/05 have been fully considered but they are not persuasive. The declaration is ineffective to overcome the date of the prior art; the remaining remarks are moot.

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

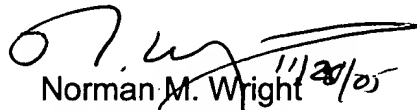
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norman M. Wright whose telephone number is (703) 305-9586. The examiner can normally be reached on 5/4/9 compressed week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Morse can be reached on (703) 308-4789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Norman M. Wright  
Primary Examiner  
Art Unit 2134

nmw